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ATTORNEYS FOR CLASS

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GERALD HESTER, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

VISION AIRLINES, INC.,

Defendant.

Case No.: 2:09-CV-00117-RLH-RJJ

**MOTION FOR LEAVE TO FILE SUR-REPLY IN RESPONSE TO VISION AIRLINES,
INC.'S, REPLY IN SUPPORT OF MOTION TO DISQUALIFY GERALD HESTER AND
OTHER APPROPRIATE SANCTIONS**

The Class, by and through undersigned counsel, hereby moves to file a Sur-reply to Defendant Vision Airlines, Inc.'s ("Vision"), Reply in Support of Vision's Motion to Disqualify Gerald Hester and Other Appropriate Sanctions ("Reply") [D.E. 129]. The Sur-reply is necessitated by Vision's misstatement of the record and, in brief, would state the following:

- Without any citation to authority, Vision in its Reply states, "the lead Plaintiff Hester not only did not seek out counsel nor did he respond to a press release, but he was actually contacted first by the counsel for the Class. . ." [D.E. 129 at 3.] Hester's affidavit clearly contradicts this statement. Hester actually

1 stated, “[a]fter reviewing my communications, I note that I originally
 2 contacted the attorneys at Kozyak Tropin and Throckmorton (“KTT”) in mid
 3 August 2008, to discuss possible legal action against Vision related to my
 4 employment and termination . . . Prior to that date, I had no contact with any
 attorney from KTT. Thus, I sought KTT’s representation in this matter.”
 [D.E. 126, Ex. 22 at ¶ 3.]

- 5 • Vision in its Reply states, “[t]he Class has provided no evidence of Plaintiff
 6 Hester taking any steps to supervise this action” [D.E. 129 at 3.] This
 7 statement is demonstrably false. Hester in his deposition and his affidavit
 8 stated that he reviewed and approved the Complaint prior to its filing [D.E.
 9 126, Ex. 21 at 161], provided Class counsel with the information that related
 10 to himself for the Complaint [*id.* at 181], assisted Class counsel in responding
 to Vision’s interrogatories, requests for admission, and document requests
 [D.E. 126, Ex. 22 at ¶¶ 7-8], reviewed the Class’s pleadings prior to their
 filing [*id.* at ¶ 6], and sat for an eight hour deposition [*id.* at ¶ 11].
- 11 • Vision states that, “Hester also claims to have no knowledge of anyone being
 12 owed hazard pay.” [D.E. 129 at 9.] Hester actually testified that, “I just asked
 [Daniel Carson] that I had heard rumors about hazard pay.” [D.E. 126, Ex. 21
 13 at 35.] He also testified that he heard rumors from other Vision employees
 14 but could not remember their names. [*Id.* at 36.] Hester testified that while
 employed at Vision he spoke with Dave Pritchard, an Air Bridge Program
 15 pilot at Vision, about Pritchard’s discussions with James Maguire, Vision’s
 Director of Flight Operations, about hazard pay. [*Id.* at 171.] Hester also
 16 testified that, “I’m uncertain as to how much I am individually owed,”
 because, “[t]he amount of the hazard pay that Vision collected was not
 17 disclosed to us employees.” [*Id.* at 132.]

18 Thus, Vision’s statements in its Reply are misleading and directly contradicted by the
 19 record.

20 **WHEREFORE**, the Class respectfully requests that the Court grant its Motion for Leave
 21 to File Sur-reply in Response to Vision’s Reply in Support of its Motion to Disqualify Gerald
 22 Hester and Other Appropriate Sanctions.
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Respectfully submitted,

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By: /s/ David M. Buckner
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served via the Court's CM/ECF system on June 1, 2010 on Harold P. Gewerter, Esq., 2705 Airport Drive, North Las Vegas, Nevada 89032.

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